



**6450-01-P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 205**

**RIN 1901-AB40**

**Grid Security Emergency Orders: Procedures for Issuance**

**AGENCY:** Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The U.S. Department of Energy is proposing to issue procedural regulations concerning the Secretary of Energy's issuance of an emergency order following the President's declaration of a Grid Security Emergency, under the Federal Power Act, as amended. The proposed procedures, if adopted, are intended to ensure the expeditious issuance of emergency orders under the Federal Power Act.

**DATES:** Public comment on this proposed rule will be accepted until **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by RIN 1901-AB40, by any of the following methods:

1. Follow the instructions for submitting comments on the Federal eRulemaking Portal at <http://www.regulations.gov>.

2. Send e-mail to [oeregs@hq.doe.gov](mailto:oeregs@hq.doe.gov). Include RIN 1901-AB40 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.

3. Address postal mail to U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, Mailstop OE-20, Room 8G-017, 1000 Independence Avenue, SW, Washington, DC 20585.

Due to potential delays in the delivery of postal mail, we encourage respondents to submit comments electronically to ensure timely receipt.

This notice of proposed rulemaking, and any comments that DOE receives will be made available on [regulations.gov](https://www.regulations.gov). You may request a hardcopy of the comments be sent to you via postal mail by contacting [oeregs@hq.doe.gov](mailto:oeregs@hq.doe.gov) or the DOE's Office of Electricity Delivery and Energy Reliability at Mailstop OE-20, Room 8G-017, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Baumgartner, (202) 586-1411; U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, Mailstop OE-20, Room 8G-017, 1000 Independence Avenue, SW, Washington, DC 20585; or [oeregs@hq.doe.gov](mailto:oeregs@hq.doe.gov).

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## **I. Introduction and Background**

On December 4, 2015, the President signed into law the Fixing America’s Surface Transportation Act (“FAST Act” or “The Act”), Public Law No. 114-94. The Act contains several provisions designed to protect and enhance the Nation’s electric power delivery infrastructure. Section 61003 of the Act adds a new section 215A, titled “Critical Electric Infrastructure Security,” to Part II of the Federal Power Act, codified at 16 U.S.C. 824o-1. New section 215A(a) defines, among other terms, a “grid security emergency.” New section 215A(b) authorizes the Secretary of Energy to order emergency measures after the President declares a grid security emergency. A grid security emergency could result from a physical attack, a cyber-attack using electronic communication or an electromagnetic pulse (EMP), or a geomagnetic storm event, damaging certain electricity infrastructure assets and impairing the reliability of the Nation’s power grid. Emergency orders responding to grid security emergencies would aim to

mitigate or eliminate threats to reliability as quickly and efficiently as possible. The statute authorizes the Secretary of Energy to issue orders for emergency measures as are necessary, in the Secretary's judgment, to protect or restore the reliability of critical electric infrastructure or defense critical electric infrastructure during the emergency. Critically, the Department's centralized direction following a declared grid security emergency will help the Department to coordinate resources efficiently to minimize the impact of the emergency.

The authority granted in section 215A of the Federal Power Act supplements the Secretary's existing authority, under section 202(c) of the Federal Power Act, to order temporary emergency measures if the Secretary finds "that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes," that the Secretary believes "will best meet the emergency and serve the public interest." To that end, the Secretary may issue orders under section 202(c) requiring the "temporary connections of facilities[,] generation, delivery, interchange, or transmission of electric energy."

The FAST Act also directs the Secretary, "after notice and opportunity for comment," to "establish rules of procedure that ensure that such authority can be exercised expeditiously." To ensure that stakeholders and the public understand how the Department would issue an order responding to a grid security emergency, the Department proposes in this notice of proposed rulemaking the procedures it would expect to follow in the event of such emergency. DOE proposes to add these procedures to the existing subpart W in 10 CFR part 205.

### Synopsis of the Notice of Proposed Rulemaking

#### A. General

Both natural and artificial events can disrupt the Nation's power grid. Geomagnetic storm events are unavoidable natural phenomena, and an event of sufficient strength could compromise the grid. EMPs pose another significant threat. Cyber- and physical attacks on infrastructure could also damage or disrupt critical grid components. The Department is committed to minimizing any disruptions from an attack on, or natural damage to, the Nation's power grid. Responses to grid disruptions will need to be tailored to the particular circumstances, and the Department now has the authority to respond as necessary to mitigate the effects of a grid security emergency.

If the President should declare a grid security emergency, the Department intends to follow the procedures established in this rulemaking proceeding. The Secretary is authorized to issue emergency orders “[w]henver the President issues and provides to the Secretary [of Energy] a written directive or determination identifying a grid security emergency.” The purpose of an emergency order is to designate “emergency measures as are necessary in the judgment of the Secretary to protect or restore the reliability of critical electric infrastructure or of defense critical electric infrastructure during such emergency.”

## B. Definitions

The proposed rule begins with definitions of key terms in § 205.380. Further explanations for certain definitions and terms appear below.

“Bulk-power system” encompasses the facilities used to transmit electricity and energy needed to maintain the reliability of that system of interconnected facilities—in essence, the electric power grid for which the President might declare a grid security emergency and authorize the Secretary to issue emergency orders to protect or restore its reliability. The term excludes facilities used in

local electric distribution. This definition is drawn from the statutory definition applicable throughout section 215A of the Federal Power Act.

“Commission” refers to the Federal Energy Regulatory Commission, which is responsible for approving applicable reliability standards. This term does not apply here to State regulatory commissions or to the former Federal Power Commission.

“Electric Reliability Organization” refers to the organization, certified by the Commission under section 215(c) of the Federal Power Act, which establishes and enforces reliability standards with Commission oversight. As of this rulemaking, the Commission’s designated Electric Reliability Organization is the North American Electric Reliability Corporation (NERC).

“Electricity Information Sharing and Analysis Center” (E-ISAC) refers to the organization, operated on behalf of the electricity subsector by the North American Electric Reliability Corporation, that gathers and analyzes security information, coordinates incident management, and communicates mitigation strategies with stakeholders within the electricity subsector, across interdependent sectors, and with government partners. E-ISAC is one of the organizations with which the Secretary will consult, to the extent practicable, in issuing an emergency order.

The “Electricity Subsector Coordinating Council” (ESCC) refers to the organization that aims to foster and facilitate the coordination of sector-wide, policy-related activities and initiatives designed to improve the reliability and resilience of the electricity subsector, including physical and cyber security infrastructure. The ESCC is another of the organizations with which the Secretary will consult, to the extent practicable, in issuing an emergency order. DOE considers the “electricity subsector” to include commercial and industrial actors who generate and deliver electric power, along with the facilities those actors use to generate and deliver the power.

An “Electromagnetic pulse” is one (1) or more pulses of electromagnetic energy emitted by a device capable of disabling or disrupting operation of, or destroying, electronic devices or communications networks, including hardware, software, and data, by means of such a pulse. The pulse can be accidental, incidental, or malicious.

The “Emergency & Incident Management Council” (EIMC) is the organization, internal to the Department and chaired by the Deputy Secretary of Energy, designed to increase cooperation and coordination across the Department to prepare for, mitigate, respond to, and recover from emergencies. The EIMC plays a central role in Grid Security Emergency orders, as it will meet, if practicable, after the President declares the emergency to prepare recommendations to the Secretary.

“Geomagnetic storm” refers to a temporary disturbance of the Earth’s magnetic field resulting from solar activity. These natural phenomena are sometimes powerful enough to disrupt the Bulk-power system. If the disruption is sufficiently severe, a Grid Security Emergency could result.

“Regional entity” refers to organizations responsible for enforcing reliability standards for the Bulk-power system in certain, defined regions. These organizations operate under NERC and Commission oversight.

### C. Summary of Proposed Rule

As described in proposed § 205.381, orders issued under section 215A(b) of the Federal Power Act may apply to the pertinent Electric Reliability Organization (NERC, as of this rulemaking),

regional entity, or “any owner, user, or operator of critical electric infrastructure or of defense critical electric infrastructure within the United States.”

The procedures are designed to allow the Secretary to address a declared grid security emergency. The statute authorizes the Secretary to order response measures that the Secretary believes are necessary to protect or restore the reliability of certain infrastructure in a grid security emergency. Because the nature of a grid security emergency is uncertain, the procedures allow for flexibility in response measures and, as the statute requires, to “ensure that such authority can be exercised expeditiously.” While the procedures are expected to produce the most efficient and effective emergency response possible under the circumstances, the Secretary has final authority to issue appropriate grid security emergency orders.

In the event of a grid security emergency, DOE will immediately activate its unified command structure and coordinate outreach efforts. DOE expects that the EIMC will anchor the Department’s proposed response via its recommendations to the Secretary. Based on the nature and timing of the emergency, however, the Secretary would maintain discretion, based on a judgment of the relevant circumstances, to issue an emergency order without EIMC input. To the extent practicable, DOE will promptly alert stakeholders of the grid security emergency through existing alert mechanisms, such as the NERC alert system and ESCC communication coordination processes.

Proposed § 205.382 outlines the EIMC procedures. When the Department is notified, in writing, that the President has declared a grid security emergency and has directed the Secretary to order emergency response measures, the EIMC will be activated. The EIMC will create ad hoc task groups, assign recommendation development tasks to these groups, and coordinate the



Department's consultation efforts. The EIMC may take other actions but only as necessary and practicable to develop the Department's recommendations to the Secretary. After the EIMC makes its recommendations, the Secretary will issue the emergency order. Again, the Department would follow these procedures to the extent practicable, but subject to the Secretary's judgment of the urgency of the situation and the best approach under the circumstances.

Consistent with the Department's longstanding practice, all reasonable efforts will be made to consult with stakeholders prior to the issuance of an emergency order. The statute also requires the Secretary to consult with other governmental authorities and non-governmental entities before issuing emergency orders, "to the extent practicable in light of the nature of the grid security emergency and the urgency of the need for action." The Department understands that electric reliability entities and private industry will likely be impacted by the emergency and have important situational awareness to assist the Department in identifying mitigation or protection measures. Proposed § 205.383 outlines how the Department will coordinate its communication with other entities. Within the Department, the Office of Electricity Delivery and Energy Reliability (OE) will be the lead program office supporting the Secretary in issuing grid security emergency orders. As set forth in this proposed rule, OE would be responsible for conducting the required consultations under the statute. Consultation would include the Department's effort to obtain information and recommended emergency measures from those government entities,<sup>1</sup> electric reliability entities, and owners, users, or operators of critical

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<sup>1</sup> DOE notes that the regulatory text of proposed §205.383 discusses consultation with agencies supporting Emergency Support Function (ESF) #12. For clarification, ESF #12 is the Department of Energy's responsibility to help reestablish damaged energy systems and components when an incident requires a coordinated Federal response. The scope of ESF #12 includes providing technical expertise; collecting, evaluating, and sharing information on

electric infrastructure or of defense critical electric infrastructure—including private-sector entities—impacted by the emergency. Historically, the Department has collaborated with other Federal agencies in an energy emergency to obtain waivers or special permits to facilitate expedited restoration. Here, the Department also intends to work with other Federal agencies to obtain waivers or special permits necessary to comply with the Secretary’s order.

After the Secretary issues an emergency order, the Department will communicate the order’s content to the entities subject to the order, as noted in proposed § 205.384. The Department will also enlist the ESCC and E-ISAC to communicate the order’s content to those affected. The Department will also use any other form of communication most appropriate under the circumstances. Optimal communication on grid security emergencies will be paramount during the emergency, and the Department will work to ensure that information is shared that will help it to respond most effectively. For that reason, according to proposed § 205.384 and consistent with obligations to protect classified information, the Secretary may declassify information eligible for that change in status to ensure maximum distribution of information critical to the emergency response.

This proposed rule is limited to the Department’s procedures for issuing an emergency order in response to a grid security emergency. Should the Secretary issue such an order, the order itself would set out the requirements and procedures for impacted entities to seek clarification or reconsideration of that particular order. Proposed § 205.385 provides general requirements for such requests. In particular, DOE proposes that anyone subject to a particular order may submit

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energy system damage; estimating the impact of system outages locally, regionally, and nationally; helping government and private sector entities overcome challenges in reestablishing energy system; and providing information about the status of energy reestablishment efforts.

a request for clarification or reconsideration in writing to the Secretary. The requests would be posted on the Department's website consistent with criteria established for treatment of critical electric infrastructure information. In acting on a request for clarification or reconsideration, the Secretary may grant or deny the request or may abrogate or modify the final order, in whole or in part, with or without further proceedings, as soon as practicable. Such a request would not stay an emergency order unless the Secretary so determined.

As warranted, and to the extent practicable and consistent with obligations to protect classified information, the Secretary may allow key personnel of ordered entities temporary access to classified information. Proposed § 205.386 sets out this approach.

Proposed § 205.387 describes termination of grid security emergency orders. An emergency order remains effective for up to fifteen (15) days and may be extended for subsequent periods of up to 15 days if the President issues another directive to the Secretary that the original emergency has not ended or that the emergency measures already ordered are still required. If warranted, the Secretary may also terminate an order before the 15 days have elapsed. The entity or entities subject to the emergency order may also request that the Secretary terminate an order if the entity or entities believes that the grid security emergency ceases to exist and that protection or restoration of the grid has been achieved.

The Department also plans to determine compliance with grid security emergency orders, as described in proposed § 205.388. At the time the Department issues an emergency order, or shortly after the issuance, the Department may require the ordered party to provide a detailed account of compliance actions. As noted in proposed § 205.389, enforcement provisions in Part III of the Federal Power Act also apply to orders issued under section 215A. *See* 42 U.S.C. §§

7151(b) & 7172(a)(2)(A). For appeal purposes, as noted in proposed § 205.390, the Federal Power Act includes the requirements for a rehearing request and the process for an appeal of a decision.

As indicated in proposed § 205.391, the Department will not adjudicate cost recovery under an emergency order, as that determination is reserved for the Commission, state regulators, or the United States Court of Federal Claims. Specifically, the FAST Act allows the Commission to “establish a mechanism” allowing an aggrieved party to recover costs, but only if it determines that such a party has “incurred substantial costs to comply with an order for emergency measures issued under [section 215A] and that such costs were prudently incurred and cannot reasonably be recovered through regulated rates or market prices for the electric energy or services sold by” the aggrieved party.

Finally, the FAST Act shields parties affected by emergency orders from liability for what would otherwise be violations of the Federal Power Act or the reliability standards, except in cases of gross negligence. New section 215A(f) of the Federal Power Act states that any action or omission taken to comply with an emergency order that causes noncompliance “with any rule, order, regulation, or provision” of the Federal Power Act, as well as any FERC-approved reliability standard, “shall not be considered a violation” of that legal requirement. The same subsection incorporates the liability protection for emergency orders issued under section 202(c) of the Federal Power Act. That protection, for actions or omissions resulting in noncompliance with “any Federal, State, or local environmental law or regulation,” not only frees the ordered party from violations of those laws or regulations, but also shields the ordered party from “any requirement, civil or criminal liability, or a citizen suit under such environmental law or

regulation,” even if a court subsequently stays, modifies, or sets aside the order. Proposed § 205.392 describes all of these protections.

### **III. Public Participation**

#### **A. Submission of Comments**

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide

documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### **IV. Regulatory Review**

##### **A. Executive Order No. 12,866**

This proposed rule has been determined to be a significant regulatory action under Executive Order No. 12,866, "Regulatory Planning and Review," 58 FR 51,735 (Oct. 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

##### **B. National Environmental Policy Act**

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A6 Rulemakings, procedural of appendix A to subpart D, 10 CFR part 1021, which applies to Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

##### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 USC 601 et seq.) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment,



unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order No. 13,272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53,461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE’s procedures and policies are available on the Office of General Counsel’s Web site: <http://www.energy.gov/gc/downloads/executive-order-13272-consideration-small-entities-agency-rulemaking>.

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule sets forth procedures that DOE expects to use to issue an order in the event of a declared grid security emergency. The procedures govern DOE activities in the issuance of an order and therefore impact DOE, a Federal agency, rather than any small entities.

DOE further expects that these orders would be issued rarely. In addition, the FAST Act authorizes DOE to issue orders only to specific entities – namely, the pertinent Electric Reliability Organization (NERC, as of this rulemaking), regional entity, or any owner, user or operator of critical energy infrastructure or defense critical energy infrastructure. DOE has determined that these entities most likely fall under NAICS code 221121, “Electric Bulk Power Transmission and Control”. To be considered a small entity, these businesses must have 500 employees or less. Due to the nature of the orders to protect or restore and/or infrastructure, DOE has determined that it is likely to consult with large businesses.

An entity subject to an order may request the clarification or rehearing of an order, or the termination of an order. DOE does not expect that these provisions, which would help an entity

to understand an order or, in the case of a termination granted by the Secretary, end the applicability of an order, to impose a significant impact on any entity. DOE may also consult with any of these entities to understand the grid security emergency and obtain recommendations to address the emergency. DOE also does not expect these consultations to result in a significant impact on any entity because the interaction would not order the entity to perform any action, but would rather be an exchange of information to help DOE understand the emergency and consider measures to protect and/or restore infrastructure. In addition, it is likely that only entities with equities that could be impacted by potential orders would be consulted. In the event that an order is issued to address a grid security emergency, because the contents of any order would be highly dependent upon the nature of the grid security emergency, DOE again emphasizes that the order itself, rather than these procedures, would specify the requirements necessary to address the grid security emergency.

On the basis of the foregoing, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### D. Paperwork Reduction Act

This proposed rule does not contain information collection requirements subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 et seq.) and the procedures implementing that Act at 5 CFR part 1320. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law No. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more in any one year (adjusted annually for inflation). 2 USC 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 USC 1534.

This proposed rule will establish the procedures DOE expects to use issue an order in the event of a declared grid security emergency. In the event that an order is issued to address a grid security emergency, the order itself, rather than these procedures, would specify the requirements necessary to address the grid security emergency. The proposed rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law No. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order No. 13,132

Executive Order No. 13,132, “Federalism,” 64 FR 43,255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would establish the procedures DOE expects to use issue an order in the event of a declared grid security emergency. In the event that an order is issued to address a grid security emergency, the order itself, rather than these procedures, would specify the requirements necessary to address the grid security emergency. No further action is required by Executive Order No. 13,132.

H. Executive Order No. 12,988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order No. 12,988, “Civil Justice Reform,” 61 FR 4729

(Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order No. 12,988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order No. 12,988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order No. 12,988.

#### I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 USC 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62,446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order No. 13,211

Executive Order No. 13,211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28,355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order No. 12,866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule would establish the procedures DOE expects to use issue an order in the event of a declared grid security emergency. In the event that an order is issued to address a grid security emergency, the order itself, rather than these procedures, would specify the requirements necessary to address the grid security emergency. In addition, the statute requires that the order must "protect or restore" critical electric infrastructure or defense critical electric infrastructure. Therefore, the rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

**List of Subjects in 10 CFR Part 205**

Administrative practice and procedure, Energy, and Recordkeeping and reporting requirements.

Issued in Washington, DC, on November 23, 2016

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Patricia Hoffman  
Assistant Secretary  
Office of Electricity Delivery and Energy Reliability

For the reasons stated in the preamble, DOE proposes to amend part 205 of chapter II, subchapter A, of Title 10 of the Code of Federal Regulations, as set forth below:

## **PART 205-ADMINISTRATIVE PROCEDURES AND SANCTIONS**

1. The authority citation for part 205 continues to read as follows:

**AUTHORITY:** Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (42 U.S.C. Section 7101). Federal Power Act, Pub. L. 66-280, 41 Stat. 1063 (16 U.S.C. Section 792) *et seq.*, Department of Energy Delegation Order No. 0204-4 (42 FR 60726). E.O. 10485, 18 FR 5397, 3 CFR, 1949-1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136.

2. Part 205 is amended by revising the heading of subpart W to read as follows:

### **Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions; Grid Security Emergency Orders**

3. Subpart W is amended by adding an undesignated center heading after §205.379 to read as follows:

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*INTERNAL PROCEDURES FOR ISSUANCE OF A GRID SECURITY EMERGENCY ORDER.*



4. Sections 205.380 through 250.392 are added to subpart W to read as follows:

Sec.

§ 205.380	Definitions.
§ 205.381	Application of emergency order.
§ 205.382	Procedures for issuing an emergency order.
§ 205.383	Outreach and consultation.
§ 205.384	Communication of orders.
§ 205.385	Clarification or reconsideration.
§ 205.386	Temporary access to classified information.
§ 205.387	Termination of an emergency order.
§ 205.388	Tracking compliance.
§ 205.389	Enforcement.
§ 205.391	Cost recovery.
§ 205.392	Liability exemptions.

**§ 205.380      Definitions.**

As used in this part:

Bulk-power system means:

- (1) Facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and
- (2) Electric energy from generation facilities needed to maintain transmission system reliability.
- (3) The term does not include facilities used in the local distribution of electric energy.

Commission means the Federal Energy Regulatory Commission.

Critical electric infrastructure means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.

Defense critical electric infrastructure means any electric infrastructure located in any of the 48 contiguous States or the District of Columbia that serves a facility designated by the Secretary as:

- (1) Critical to the defense of the United States; and
- (2) Vulnerable to a disruption of the supply of electric energy provided to such facility by an external provider, but that is not owned or operated by the owner or operator of such facility.

Department means the United States Department of Energy.

Electric reliability organization means the organization, certified by the Commission under section 215(c) of the Federal Power Act, 16 U.S.C. 824o(c), the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

Electricity information sharing and analysis center means the organization, operated on behalf of the electricity subsector by the Electric Reliability Organization, that gathers and analyzes security information, coordinates incident management, and communicates mitigation strategies with stakeholders within the electricity subsector, across interdependent sectors, and with government partners. The E-ISAC, in collaboration with the Department of Energy and the Electricity Subsector Coordinating Council (ESCC), serves as the primary security communications channel for the electricity subsector and enhances the subsector's ability to prepare for and respond to cyber and physical threats, vulnerabilities, and incidents.

Electricity subsector coordinating council means the organization that aims to foster and facilitate the coordination of sector-wide, policy-related activities and initiatives designed to improve the reliability and resilience of the electricity subsector, including physical and cyber security infrastructure.

Electromagnetic pulse means one or more pulses of electromagnetic energy emitted by a device capable of disabling or disrupting operation of, or destroying, electronic devices or communications networks, including hardware, software, and data, by means of such a pulse.

Emergency & incident management council means the organization, internal to the Department of Energy and chaired by the Deputy Secretary of Energy, designed to increase cooperation and coordination across the Department to prepare for, mitigate, respond to, and recover from emergencies.

Geomagnetic storm means a temporary disturbance of the Earth's magnetic field resulting from solar activity.

Grid security emergency means the occurrence or imminent danger of:

- (1) A malicious act using electronic communication or an electromagnetic pulse, or a geomagnetic storm event, that could disrupt the operation of those electronic devices or communications networks, including hardware, software, and data, that are essential to the reliability of critical electric infrastructure or of defense critical electric infrastructure; and
- (2) Disruption of the operation of such devices or networks, with significant adverse effects on the reliability of critical electric infrastructure or of defense critical electric infrastructure, as a result of such act or event; or

(3) A direct physical attack on critical electric infrastructure or on defense critical electric infrastructure; and

(4) Significant adverse effects on the reliability of critical electric infrastructure or of defense critical electric infrastructure as a result of such physical attack.

Regional entity means an entity having enforcement authority under section 215(e)(4) of the Federal Power Act, 16 U.S.C. 824o(e)(4).

Secretary means the Secretary of Energy.

**§ 205.381      Application of emergency order.**

An order for emergency measures under section 215A(b) of the Federal Power Act may apply to the Electric Reliability Organization, a regional entity, or any owner, user, or operator of critical electric infrastructure or of defense critical electric infrastructure within the United States.

**§ 205.382      Procedures for issuing an emergency order.**

(a) The Secretary has final authority and may act as quickly as necessary to address the emergency. The Secretary will adhere to these procedures unless, in the Secretary's judgment, the emergency requires alternative procedures.

(b) Upon the Department's receipt of the President's written directive or determination identifying a Grid Security Emergency, the Emergency & Incident Management Council (Council) will convene at least one emergency meeting. Resulting from this meeting, the Council's responsibilities will include, but not be limited to:

(1) Assigning consultation and situational awareness tasks;

- (2) Creating ad hoc task groups; and
  - (3) Assigning recommendation development tasks to the ad hoc task groups it has created.
- (c) The Council will present its recommendations to the Secretary as expeditiously as possible and practicable. As quickly as the situation requires, following presentation of the Council's recommendations, the Secretary will issue the emergency order.

**§ 205.383      Outreach and consultation.**

The Department of Energy's Office of Electricity Delivery and Energy Reliability will conduct consultation related to any order issued by the Secretary in response to a declared Grid Security Emergency. Before the issuance of any order, to the extent practicable in light of the nature of the Grid Security Emergency and the urgency of the need for action, outreach efforts will be made to consult at least the following: authorities in the government of Canada; authorities in the government of Mexico; appropriate Federal agencies including, but not limited to, those supporting Emergency Support Function No. 12; the Commission; and at least the following non-government entities: the Electricity Subsector Coordinating Council, the Electric Reliability Organization, regional entities, and owners, users, or operators of Critical Electric Infrastructure or of Defense Critical Electric Infrastructure within the United States.

Consultation will include the Department's effort to obtain information related to the Grid Security Emergency and recommended emergency measures from those governments, electric reliability entities, and private sector companies impacted by the emergency.

**§ 205.384      Communication of orders.**

The Department will communicate the content of emergency orders issued by the Secretary to the parties subject to the order. The Department will also rely on existing coordinating bodies, such as the Electricity Subsector Coordinating Council and the Electricity Information Sharing and Analysis Center, in addition to any other form or forms of communication most expedient under the circumstances, to communicate the content of emergency orders issued by the Secretary. To the extent practicable under the circumstances, efforts will be made to declassify information to ensure maximum distribution.

**§ 205.385 Clarification or reconsideration.**

Any request for clarification or reconsideration of an emergency order issued under section 215A(b) of the Federal Power Act must be submitted in writing to the Secretary, and will be posted on the DOE website consistent with CEII criteria. The Secretary may, in his sole discretion, order a stay of the emergency order for which such clarification or rehearing is sought. The Secretary may grant or deny the request for clarification or reconsideration, or may abrogate or modify the order, in whole or in part, with or without further proceedings, as soon as practicable.

**§ 205.386 Temporary access to classified information.**

To the extent practicable, and consistent with obligations to protect classified information, the Secretary may provide temporary access to classified information, related to a Grid Security Emergency for which emergency measures are issued, to key personnel of any entity subject to such emergency measures. The purpose of this access is to enable optimum communication between the entity and the Secretary and other appropriate Federal agencies regarding the Grid Security Emergency.

**§ 205.387 Termination of an emergency order.**

- (a) An order for emergency measures shall expire no later than 15 days after its issuance.

The Secretary may reissue an order for emergency measures for subsequent periods, not to exceed 15 days for each such period, provided that the President, for each such period, issues and provides to the Secretary a written directive or determination that the Grid Security Emergency for which the Secretary intends to reissue an emergency order continues to exist or that the emergency measures continue to be required.

- (b) The Secretary may rescind an emergency order after finding that the Grid Security Emergency for which that order was issued has ended and that protective or mitigation measures required by the order have been sufficiently taken.

- (c) An entity or entities subject to an emergency order under this rule may, at any time, request termination of the emergency order by demonstrating, in a petition to the Secretary, that the emergency no longer exists and that protective or mitigation measures required by the order have been sufficiently taken.

**§ 205.388 Tracking compliance.**

Beginning at the time the Secretary issues an emergency order, the Department may require the ordered party to provide a detailed account of actions taken to comply with the terms of the order.

**§ 205.389 Enforcement.**

In accordance with Part III of the Federal Power Act, the Secretary may take or seek enforcement action against ordered parties who fail to comply with the terms of an order issued under section 215A(b) of that Act.

**§ 205.390      Rehearing and Judicial Review.**

The procedures of Part III of the Federal Power Act apply to motions for rehearing of orders issued under section 215A(b) of that Act filed for the purpose of preserving appellate rights.

**§ 205.391      Cost recovery.**

A party seeking recovery of costs associated with compliance with an order issued under section 215A(b) of the Federal Power Act must petition the appropriate State regulatory agency, the United States Court of Federal Claims, or the Commission for relief.

**§ 205.392      Liability exemptions.**

To the extent any action or omission taken by an entity that is necessary to comply with an order for emergency measures issued by authority of section 215A(b) of the Federal Power Act and pursuant to this Part, including any action or omission taken to voluntarily comply with such order, results in noncompliance with, or causes such entity not to comply with any rule, order, regulation, or provision of or under that Act, including any reliability standard approved by the Commission pursuant to section 215 of that Act, such action or omission shall not be considered a violation of such rule, order, regulation, or provision. Further, an action or omission by an owner, operator, or user of Critical Electric Infrastructure or of Defense Critical Electric Infrastructure to comply with an order for emergency measures issued under section



215A(b) of the Federal Power Act shall be treated as an action or omission taken to comply with an order issued under section 202(c) of that Act for purposes of such section. These liability exemptions shall not apply to an entity that, in the course of complying with an order for emergency measures issued under section 215A(b) of the Federal Power Act by taking an action or omission for which the entity would otherwise be liable, takes such action or omission in a grossly negligent manner.

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